

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CV 16-196 JB/WPL
CR 15-2485 JB

KEVIN FOLSE,

Defendant.

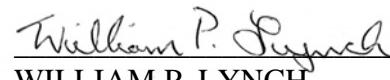
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

After a jury trial, Kevin Folse was found guilty on October 8, 2015, of two counts of carjacking, aiding and abetting; one count of using, carrying, and brandishing a firearm during and in relation to a crime of violence, and possessing and brandishing a firearm in furtherance of such crime; and one count of felon in possession of a firearm. (CR Doc. 105.) Folse is scheduled for sentencing on May 17, 2016. (CR Doc. 144.) Folse filed this Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody on March 16, 2016. (CR Doc. 148; CV Doc. 1.)

Section 2255 provides that “[a] prisoner in custody under sentence of a court” may petition that court to vacate, set aside, or correct the sentence on the basis that “the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” In this case, Folse has not been sentenced. Therefore, his motion is untimely.

I recommend that the Court deny as untimely Folse's motion under § 2255, dismiss the civil case without prejudice, and grant Folse leave to file an appropriate § 2255 motion after he has been sentenced and exhausts any relevant direct appeals.

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.


WILLIAM P. LYNCH
UNITED STATES MAGISTRATE JUDGE

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any pro se
party as they are shown on the Court's docket.